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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re ) Case No. 06-21066-A-7  
CORNELIUS and KAREN COVINGTON, ) Docket Control No. KRS-2 &  
Debtors. ) KRS-4  
Date: Sept. 11, 2006  
Time: 9:00 a.m.

## MEMORANDUM

Cornelius F. Covington ("the debtor") is one of the joint debtors in this chapter 7 case. His petition was filed after the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) became effective.

The Madera County Child Support Department has filed a proof of claim on behalf of the debtor's daughter. The proof of claim demands \$38,211.59 for past due child support.

11 U.S.C. § 101(14A) defines a domestic support obligation as:

a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided by applicable nonbankruptcy law notwithstanding any other provision of this title, that is- (A) owed to or recoverable by- (i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or (ii) a governmental unit; (B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of- (I) a separation agreement, divorce decree, or property settlement agreement; (ii) an order of a court of record; or (iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and (D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

Based on the information in the proof of claim, to which no objection has been filed, it is clear that the \$38,211.59 is a domestic support obligation.

When a debt is a domestic support obligation, it cannot be discharged by an individual chapter 7 debtor. See 11 U.S.C. § 523(a)(5). Consequently, once an individual debtor receives a chapter 7 discharge, the holder of a domestic support obligation claim is not subject to the statutory injunction barring enforcement of the debt against the debtor as a personal liability. See 11 U.S.C. §§ 523(a)(5), 524(a)(2), & 727(b).

Moreover, a domestic support obligation may be enforced against property of the debtor, both during the chapter 7 case without violation of the automatic stay, and after entry of a discharge without violation of the discharge injunction. See 11 U.S.C. §§ 362(b)(2)(B) & 522(c)(1). This is so even when the property against which the domestic support obligation is being enforced has been exempted by the debtor in the bankruptcy case. See 11 U.S.C. §§ 522(c)(1). Section 522(c)(1) provides in pertinent part:

Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose ... before the

1 commencement of the case, except - (1) a debt of a kind  
2 specified in paragraph ... (5) of section 523(a) (in  
3 which case, notwithstanding any provision of applicable  
4 nonbankruptcy law to the contrary, such property shall  
5 be liable for a debt of a kind specified in section  
6 523(a)(5))....

7 Because the debtor in this chapter 7 case owes a domestic  
8 support obligation, the trustee argues that section 522(c)(1)  
9 requires the disallowance of the debtor's exemptions in a \$1,000  
10 bank deposit and an automobile to permit these assets to be  
11 liquidated and the proceeds paid to the holder of the domestic  
12 support obligation claim.

13 The trustee's objection to these exemptions will be  
14 overruled. Section 522(c)(1) does not provide for the  
15 disallowance of an exemption. Rather, it provides that property  
16 exempted by the debtor is nonetheless liable for a domestic  
17 support obligation. Disallowance of the exemption is not a  
18 predicate to the enforcement of a domestic support obligation  
19 against the property.

20 The next issue is whether, by virtue of section 522(c)(1),  
21 the trustee may liquidate the exempt property in order to pay the  
22 domestic support obligation. The court concludes that he may  
23 not. The trustee's motion to sell the automobile will therefore  
24 be denied.

25 A chapter 7 trustee must "collect and reduce to money  
26 **property of the estate....**" [Emphasis added.] See 11 U.S.C. §  
27 704(a)(1). When a debtor exempts property, it is effectively  
28 removed from the estate.<sup>1</sup> See, e.g., In re Szekely, 936 F.2d 897

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<sup>1</sup> However, if the property declared exempt by the debtor  
has value beyond the exemption amount, or if it appreciates

1 (7<sup>th</sup> Cir. 1991). Here, the automobile and the bank deposit have  
2 been removed from the estate by virtue of their exemption. There  
3 is no nonexempt value in either asset and neither has appreciated  
4 above the maximum exemption amount. Therefore, there is no  
5 "property of the estate" for the trustee to administer for the  
6 benefit of creditors in general or the holder of the domestic  
7 support obligation in particular.

8 An analogous situation, one that predates the enactment of  
9 BAPCPA, involves the enforcement of nondischargeable tax claims  
10 against exempt property. Like domestic support obligations,  
11 section 522(c)(1) permits the holder of a nondischargeable tax  
12 claim to enforce it against property the debtor has exempted in  
13 the bankruptcy case. See 11 U.S.C. § 523(a)(1). When taxes are  
14 owed, for example, to the Internal Revenue Service, section  
15 522(c)(1) dovetails with 26 U.S.C. § 6334(c) which provides that  
16 "[n]otwithstanding any other law of the United States..., no  
17 property or rights to property shall be exempt from levy" unless  
18 26 U.S.C. § 6334(a) provides an applicable exemption. Kieferdorf  
19 v. Commissioner, 142 F.2d 723 (9<sup>th</sup> Cir. 1944).

20 Even though this provision has been part of the Bankruptcy  
21 Code since 1979, the trustee has cited no authority indicating  
22 that he may liquidate otherwise exempt property because the  
23 debtor happens to owe a nondischargeable tax claim.

24 Also, while section 522(c)(1) permits the enforcement of  
25 domestic support obligation and tax claims against "property  
26

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27 beyond the exemption amount after the petition is filed, the  
28 nonexempt amount or appreciation is property of the estate that  
may be administered by the trustee. See In re Hyman, 967 F.2d  
1316 (9<sup>th</sup> Cir. 1992).

1 exempted under ... section [522]," when such claims are enforced  
2 pursuant to applicable nonbankruptcy law, that law may provide  
3 the debtor with exemptions apart from section 522.

4 For instance, even though a debtor's exemptions under  
5 section 522(b) will not prevent the Internal Revenue Service from  
6 levying on property, it cannot levy against property of the type  
7 described in 26 U.S.C. § 6334(a). And, in California, the  
8 enforcement of a judgment for child, family, or spousal support  
9 (all of which would be encompassed within the definition of a  
10 domestic support obligation), is subject to some exemptions. See  
11 Cal. Civ. Proc. Code §§ 703.070, 703.115.

12 Given the potential availability of these "nonbankruptcy"  
13 exemptions, in a chapter 7 case that would otherwise be a "no-  
14 asset" case, it makes more sense to require the holder of a  
15 domestic support obligation claim, not the bankruptcy trustee, to  
16 enforce a domestic support obligation in a nonbankruptcy forum.  
17 That forum then may deal with the availability and extent of  
18 nonbankruptcy exemptions.

19 Finally, a chapter 7 trustee generally will not administer  
20 an asset unless it will produce a net return for the estate. For  
21 instance, when an asset is fully encumbered by a lien, it is  
22 considered improper for a chapter 7 trustee to liquidate the  
23 asset. See e.g., In re Preston Lumber Corp., 199 B.R. 415  
24 (Bankr. N.D. Cal. 1996).

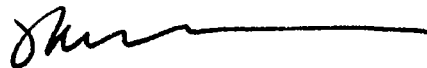
25 While the trustee's motion to sell does not involve the sale  
26 of fully encumbered property, the property is being liquidated  
27 for the benefit of just one creditor - the holder of the domestic  
28 support obligation claim - rather than unsecured creditors

1 generally. Given that the Madera County Child Support Department  
2 is collecting the claim for the benefit of the claim holder, it  
3 is clear that the assistance of the trustee, which would come at  
4 a price, is unnecessary. By enforcing the domestic support  
5 obligation in state court, the trustee's administrative expenses  
6 will be avoided. Cf. Williams v. California 1<sup>st</sup> Bank, 859 F.2d  
7 664 (9<sup>th</sup> Cir. 1988) (holding that it is improper for a trustee to  
8 liquidate claims that benefit only select creditors with the only  
9 benefit to the estate being the recoupment of administrative  
10 costs).

11 For these reasons, the trustee's objections to the debtor's  
12 exemptions will be overruled and his motion to sell the  
13 automobile will be denied. Separate orders will be entered.

14 Dated: Sept. 22, 2006

BY THE COURT

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18 Michael S. McManus, Chief Judge  
United States Bankruptcy Court  
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CERTIFICATE OF MAILING

I, Susan C. Cox, in the performance of my duties as a  
judicial assistant to the Honorable Michael S. McManus, mailed by  
ordinary mail to each of the parties named below a true copy of  
the attached document.

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Dated: September 22, 2006

Susan C. Cox  
Susan C. Cox  
Judicial Assistant to Judge McManus